O/Factories/52

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File No. 70/52

Legal Department

G. **BRANCH**

Subject.

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Opinion on the

Indian Factories Act

O/Factories/52

File No. 70/52

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C O N T E N T S

Legal Department File No. O.Factories/1952.

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1.	G-287 20/6/52.	Question whether it is obligatory on the part of Govt. to remove one of the sheets as requested by the Ex Hind Silk Mills.	1-2.
2.	G-272 21/6/52.	Factory in the Rajan Grain Market Godowns occupeied by Government where M/s.Grain Cleaners Bombay working ther grain cleaning machines as Government Contractors for cleaning Government foodgrains-- Questi n as to who should be treated as the occupier of the premises under section 2(n)---	3-6.

JPE.2772/56.8c.

Office of the R.L.A.

Under section 32 of the India Factories Act, in every factory it is obligatory to maintain staxirs etc. properly and in sound condition with handrails. Section 38 of the said Act deals with precautionsin case of fire. Underthatsection the factory is bound to provide emergency exists as means of escape in case of fire and the Inspector of Factories has power to serve an order in writing on the manager specifyingthe measures which in his opinion should be adopted to bring the facotry into conformity with the provisions of thatsection. From the letter at page 21 ante from the Hind Silk Mills it appears that the Factory Inspector has given a warning to this Mill to remove the obstruction from the emergency exist which must be kept in a condition as to be suitable for being used in an emergency. The Mill contends that they are prevented from complying with the provision of the Factories Act because of the obstruction caused by the Assistant Controller of Rationing (Government Grainshops). If the occupier of the Manager of the Factory contrvenes any provisions of the Act, he is liable to penalty under section 92. TheAssistant Controller of Rationing (Government Grainshops) cannot be held to be an actual offender under section 101. The obstruction would however amount to private nuisance which is not indictable but it would amount to a tort for which a civil action for damages would lie.It would, therefore, be advisable to settle the matter amicably with the landlord and the Mills by diverting the stairs so as not to be obstructed by the shed or by providing an opening (a sort of a flap like contrivance) in the sheet in such a way as can be kept closed during rainy season and can be opened in an emergency so as to provide easy exit to theworkers.

Id/- P.M.L.
28/6

Remembrancer of Legal Affairs.

U.R. to A.C. of R.(G.G.S.), No.G-287,

dated the 28th June1952.

JPE.27/7/56.4c.

Office of the R.L.A.

Out of the total number of 46 workers employed on the premises of the factory 3 persons are employed by the company viz.Messrs. Grain Cleaners Bombay Ltd., and the rest i.e.43 are Government employees. There is therefore, dual control so far as employees are concerned because the Company's servants would be maintained by the Company and Government employees by the Government. So far as the premises of the factory are concerned, the spaace occupied by the machines installed by the Company is rented by the Company on payment of a nominal rent of Re.1/- per month and the rest of the godown belongs to Government. The wordx 'occupier' means the person who has the ultimate control over the affairs of the factory (vide section 2(o) of the India Factories Act, 1948). In R.L.A's opinion No.G-316, dated the 30th July 1951 it was held that the Company is the occupier as the ultimate control over the factory in respect of the manufacturing process is that of the Company even though the premises belonged to Government. This position was accepted by the Company but its contention was that they were not a factory within the meaning of section 2(m)(i) because they engaged less than 10 workers. The Junior Inspector of Factories did not agree with this. This contention is also not supported by the definition of 'worker' in the Indian Factories Act. 'Worker' id defined in section 2(l) as meaning a personx employed directly or through any agency in any manufacturing process or premises used for a manufacturing process or in any kind of work incidental to, or connected with, the manufacturing process. The space rented by the Company together with the entire space of the godown belonging to Government whereon more than 10 workers are working and in which manufacturing process is being carried on by power is a facotry and therefore the workers of the Company together with the Machinery belonging to it cannot be separated from the portion occupied by

Government....

Government where Government workers are working. The Chief Inspector of Factories considers 'Government' to be occupiers as they are employing more than 20 persons as workers. In view of the complex position, there is no objection to treating Government as an 'occupier' as the bulk of the labour is employed by Government and Factory legislation is essentially a legislation for the benefit of the workers. The provisions of the Chapter relating to the health of the labourers are such as can be complied with by Government in respect of all workers including workers engaged by the Company. But some of the provisions of Chapter III relating to fencing of machinery, work on or near machinery in motion, employment of ~~young~~ young persons on dangerous machines etc. viz. propvisions of sections 21 to 26 etc. are such as are required to be complied with by the Company as the machines belong to them and are installed and worked by them with the hold of machines engaged by them. If any offence is committed by the Company under the Factories Act in respect of the machine or the workers employed by them, theoccupier can get himself exempted from liability under section 101 and the de-facto employer can be held liable. All these points should be got cleared and Settled with the Company and the Chief Inspector of Factories before Government undertakesthe full responsibility of an 'occupier' under the Factories Act.

Id/- P.M.L.
21/6/

Remembrancer of Legal Affairs.

U.R. to F.C. No. G-272,

dated the 21st June 1952.

JPE.27/7/56.4c.